

Rose M. Zoia ♦ sbn 134759  
Law Office of Rose M. Zoia  
50 Old Courthouse Square, Suite 401  
Santa Rosa CA 95404  
ph 707.526.5894  
fax 707.526.5895  
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA**

ROHNERT PARK CITIZENS TO  
ENFORCE CEQA, and DOES 1 through 5,  
inclusive,  
Plaintiff,

CASE NUMBER C 007-4607 TEH

v.

**JOINT CASE MANAGEMENT  
STATEMENT**

CALIFORNIA DEPARTMENT OF  
TRANSPORTATION, UNITED STATES  
DEPARTMENT OF TRANSPORTATION,  
FEDERAL HIGHWAY ADMINISTRATION,  
and DOES 6 through 10, inclusive,  
Defendants.

Date: March 31, 2008  
Time: 1:30 p.m.  
Ct rm: 12, 19<sup>th</sup> Fl, SF

\_\_\_\_\_ /

1 Plaintiff Rohnert Park Citizens to Enforce CEQA, Defendant California  
2 Department of Transportation (the State) and Defendants United States  
3 Department of Transportation and Federal Highway Administration (Federal  
4 Defendants) submit this further joint Case Management Statement pursuant to the  
5 Court's Case Management Order and Order Referring Case to Mediation entered  
6 December 18, 2007.  
7

8 **1. Jurisdiction and Service:** Plaintiff contends that this Court has  
9 jurisdiction pursuant to 28 U.S.C. § 1331 and 1361. This Court has pendent  
10 jurisdiction over the state California Environmental Quality Act (CEQA) and Public  
11 Records Act (PRA) claims joined with the federal NEPA claim. Venue is  
12 appropriate in the Northern District of California under 28 U.S.C. § 1391(e).  
13  
14

15 Federal Defendants state that this Court has jurisdiction pursuant to 28  
16 U.S.C. § 1331, but does not agree that it has jurisdiction under 28 U.S.C. § 1361.  
17 Further, the Office of the U.S. Attorney, Northern District of California and Federal  
18 Defendants have been served with process. Federal Defendants take no position  
19 on the issue of this Court's jurisdiction over the California Department of  
20 Transportation.  
21

22 Plaintiff obtained and filed an executed waiver of service from the State.  
23 The State states that it accepted a waiver of service but has not appeared in this  
24 action.  
25

26 The State also does not waive any immunities or defenses for lack of  
27 jurisdiction by participation in this joint statement. The due date for the State's  
28

1 response to the complaint was January 13, 2008 but was extended based upon its  
2 intent to file a Rule 12 Motion to Dismiss. Based upon the Court's case  
3 management order, the parties agreed that the initial mediation would be  
4 completed prior to the filing of the motion to dismiss. The State contends that  
5 Plaintiff is barred from suit against the State in federal court under the 11th  
6 Amendment, and intends to file its motion to dismiss soon. The State does not  
7 agree with Plaintiff that the court has jurisdiction under any of the State causes of  
8 action for CEQA or Public Records Act. The State takes no position on the  
9 jurisdiction of the NEPA claim.

12       **2. Facts:** Federal Defendants and the State proposed building the Wilfred  
13 Avenue Interchange Project in Rohnert Park, Sonoma County, California (the  
14 Project). The Project proposes to modify the interchange to connect Wilfred  
15 Avenue to Golf Course Drive by an under-crossing and to widen and realign U.S.  
16 Route 101 for HOV lanes from Rohnert Park Expressway Overcrossing to the  
17 Santa Rosa Avenue Over-crossing.

20       Federal Defendants and the State prepared and released a joint Negative  
21 Declaration/Initial Study (CEQA) and Environmental Assessment/Finding of No  
22 Significant Impact (EA/FONSI), pursuant to the National Environmental Policy Act  
23 (NEPA).

25       Plaintiff contends that the environmental documents do not discuss the  
26 environmental impacts of a casino proposed in the vicinity of the Project. Plaintiff  
27 further contends that the State failed to produce all non-privileged documents in  
28

1 response to plaintiff's California Public Records Act (PRA) request.

2 **3. Legal Issues:**

3  
4 Plaintiff contends that the legal issues are (1) whether an Environmental  
5 Impact Statement ("EIS") is required for the Project pursuant to NEPA, (2) whether  
6 recirculation of the negative declaration is required pursuant to section 15088.5 of  
7 the CEQA Guidelines (14 Cal. Code Regs.); and/or (3) whether subsequent or  
8 supplemental environmental review is required pursuant to section 15162 or  
9 section 15163 of the Guidelines; and (4) whether Caltrans violated the PRA by law  
10 by improperly and without justification withholding certain non-exempt and non-  
11 privileged public records from plaintiff and plaintiff's members and representatives.  
12

13  
14 Federal Defendants contend that the legal issue is whether the preparation  
15 of an Environmental Impact Statement ("EIS") is required for the Project, pursuant  
16 to the National Environmental Policy Act ("NEPA").

17 **4. Motions:** Plaintiff does not anticipate making any motions.

18  
19 Federal Defendants state that the parties should stipulate to a proposed  
20 schedule for briefing and hearing of cross-motions for summary judgment and ask  
21 the Court to enter an order adopting that schedule.

22  
23 The State intends to file a Rule 12 Motion to Dismiss for lack of jurisdiction  
24 as soon as possible with a hearing date set for May 2008.

25 **5. Amendment of Pleadings:** Plaintiff does not anticipate amending the  
26 complaint.

27 /

1           **6. Evidence Preservation:** Plaintiff contends that this is a mandamus case  
2 tried on the administrative record. Plaintiff elected to prepare the record under  
3 CEQA relative to the state law claim and can begin to do so with the documents  
4 received pursuant to its PRA request. Such record preparation should be  
5 coordinated with Federal Defendants so that duplication does not occur.  
6

7           Federal Defendants states that all known documents related to the  
8 administrative record have been preserved and will be made available when the  
9 administrative record is prepared and produced.  
10

11           **7. Disclosures:** This is an action for review of an administrative record and  
12 exempt from the rule for initial disclosures, pursuant to Rule 26(a)(1)(E),  
13 Fed.R.Civ.P.  
14

15           **8. Discovery:** Discovery is neither necessary nor appropriate in this action  
16 for review of an administrative record.  
17

18           **9. Class Actions:** This case is not a class action.

19           **10. Related Cases:** None.

20           **11. Relief:** Plaintiff requests (1) a Peremptory Writ of Mandate ordering  
21 defendants to set aside their respective actions and any approvals in furtherance  
22 of the project and to comply with NEPA, the APA, CEQA, the PRA, and other  
23 applicable laws prior to further consideration the project; (2) declaratory relief; (3)  
24 upon necessity and the filing of a request, that Court issue a temporary stay of  
25 the administrative approvals and/or a temporary restraining order and  
26  
27  
28

1 preliminary injunction; (4) a permanent injunction enjoining defendants from  
2 engaging in any activity connected with the approvals or the project unless and  
3 until this Court finds that the approvals are in full compliance with NEPA, the APA,  
4 CEQA, the PRA, and all other applicable laws; and (5) costs of suit and attorney's  
5 fees herein pursuant to section 1021.5 of the California Code of Civil Procedure  
6 and/or the Equal Access to Justice Act, 28 U.S.C. §§ 2412(b), (d), and/or section  
7 6259(d) of the California Government Code or pursuant to any other applicable  
8 law.  
9

10  
11 Federal Defendants request a judgment of dismissal and an award of costs.

12 **12. Settlement and ADR:** The parties participated in mediation on March  
13 11, 2008, but were unable to reach a settlement. On March 18, 2008, the  
14 assigned mediator certified that the parties held a mediation session on March 11,  
15 2008 and noted his intention to conduct a follow-up phone discussion on April 15,  
16 2008.  
17

18 The State believes that further mediation would be productive, and the  
19 mediator is scheduled to conduct further discussions with the parties by April 15.  
20

21 **13. Consent to Magistrate Judge For All Purposes:** Plaintiff consents to  
22 have a magistrate judge conduct all further proceedings including trial and entry of  
23 judgment.  
24

25 The United States respectfully declines to consent to magistrate judge for  
26 further proceedings. The State respectfully declines to consent to a magistrate  
27 judge for further proceedings.  
28

1           **14. Other References:** This case is not suitable for reference to binding  
 2 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

3           **15. Narrowing of Issues:** The issues are not amenable to being narrowed  
 4 by agreement or by motion. The evidence will be presented in the form of the  
 5 administrative record contained in volumes, indexed, and paginated.  
 6

7           **16. Expedited Schedule:** Plaintiff contends that this case can be handled  
 8 on an expedited basis with streamlined procedures. Plaintiff proposes the  
 9 following schedule:  
 10

11	3/31	Federal record complete
12	4/18	proposed index of Caltrans record submitted to Caltrans
	4/25	copy of proposed record documents to Caltrans
13	4/30	Caltrans' certification and lodgment of record
14		<i>Plaintiff suggests that the Federal and State record be combined into one record for</i>
		<i>reduction of repetitiveness and ease of use.</i>
15	5/21	opening brief
16	6/11	opposition briefs
	7/2	reply briefs

17 Plaintiff's proposed schedule anticipates four briefs: one opening brief, two (or one  
 18 combined) defendants' opposition brief[s]; and one reply brief responding to the  
 19 two or one combined defendants' opposition brief[s]. Plaintiff does not anticipate  
 20 the filing of simultaneous briefs, but a process similar to law and motion.  
 21

22           Federal Defendants suggest that the parties enter into a stipulation and ask  
 23 the Court to sign an order which sets a schedule for briefing and hearing of cross-  
 24 motions for summary judgment, as follows:  
 25

- 26           - Date for Plaintiff's motion for summary judgment
- 27           - Date for Federal Defendants' memorandum in opposition to Plaintiff's

1 motion for summary judgment and Federal Defendant's motion for summary  
2 judgment.

3 - Date for Plaintiff's reply memorandum in support of its summary  
4 judgement motion and memorandum in opposition to Federal Defendants'  
5 motion for summary judgment.

6 - Date for Federal Defendants' reply memorandum in support of its motion.

7 - Date for Court's hearing on cross-motions for summary judgment.

8 Federal Defendants recommend the foregoing briefing plan, under an  
9 agreed-upon schedule, because it serves to identify and reduce the true points of  
10 contention and promotes judicial economy by:

11 1) Reducing the number of total briefs from six (6) to four (4) , i.e., two per  
12 side; and

13 2) Allowing each party to respond to the arguments made by the adversary,  
14 thereby refining and sharpening the issues the Court truly needs to resolve.

15 This type of briefing schedule renders the briefs more helpful to the Court than  
16 one where the parties file simultaneous briefs, where the parties are completely  
17 unaware of the points being argued by their adversary, and therefore, do not  
18 address those points.

19 **17. Scheduling:** See item 16. Federal Defendants state that its proposed  
20 schedule for briefing cross motions for summary judgment should not commence  
21 until after its Administrative Record and the Administrative Record under CEQA  
22 have been prepared and made available to all parties. Federal Defendants  
23 estimate that the administrative record for the Environmental Assessment will be  
24



1 complete not later than March 31, 2008.

2 **18. Trial:** Trial is inappropriate and unnecessary in this record review case.

3  
4 The case should be handled on the briefs or motions for summary judgment  
5 based upon an agreed-upon schedule by the parties and the Court.

6 Plaintiff states that the hearing before the Court, whether on briefs or summary  
7 judgment, is expected to last 2 hours or less.

8  
9 **19. Disclosure of Non-party Interested Entities or Persons:** The parties  
10 have not filed the "Certification of Interested Entities or Persons." Plaintiff here  
11 certifies that it knows of no persons, firms, partnerships, corporations (including  
12 parent corporations) or other entities to have either: (I) a financial interest in the  
13 subject matter in controversy or in a party to the proceeding; or (ii) any other kind  
14 of interest that could be substantially affected by the outcome of the proceeding.  
15

16 Federal Defendants know no such entities or persons.

17 **20. Such other matters as may facilitate the just, speedy and**  
18 **inexpensive disposition of this matter.** Plaintiff refers the Court to item 16  
19 above. Federal Defendants know of no such matters.  
20

21  
22 Dated: April 3, 2008

Law Office of Rose M. Zoia

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24 \_\_\_\_\_/s/\_\_\_\_\_  
25 Rose M. Zoia, counsel for Plaintiff Rohnert  
26 Park Citizens to Enforce CEQA  
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SCOTT N. SCHOOLS  
United States Attorney

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\_\_\_\_\_/s/\_\_\_\_\_  
CHARLES M. O'CONNOR  
Assistant U.S. Attorney  
Counsel for Defendants United States  
Department of Transportation and Federal  
Highway Administration

BRUCE A. BEHRENS  
Chief Counsel

\_\_\_\_\_/s/\_\_\_\_\_  
JANET WONG  
Deputy Attorney  
Counsel for Defendant California  
Department of Transportation